

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BIS ADVANCED SOFTWARE SYSTEMS,  
LTD,

Plaintiff,

v.

RED BEND SOFTWARE, INC., ET AL,

Defendants.

Civil Action No. 04-11960-RWZ

**AFFIDAVIT OF SCOTT McCONCHIE**

Scott McConchie, upon oath, deposes and says as follows:

1. I am one of the attorneys representing the plaintiff, BIS Advanced Software Systems, Ltd., in the above-captioned action. I am a member in good standing of the bars of the Commonwealth of Massachusetts and this Court.
2. This affidavit is submitted in support of Plaintiff's Opposition to Defendants' Motion to Compel, filed herewith.
3. Attached hereto as Exhibit A is a true copy of excerpts from the transcript of the deposition of Mr. Daniel Glazman, which was taken September 20, 2005.

Signed under the penalties of perjury this 3<sup>rd</sup> day of November, 2005.

/s/ Scott McConchie  
Scott McConchie

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

X

BIS ADVANCED SOFTWARE SYSTEMS, :  
LTD., :

Plaintiff, : Civil Action No.

v. : 04cv11960 (RWZ)

RED BEND SOFTWARE, INC., :

RED BEND, LTD., :

TIME WARNER, INC., : C O N F I D E N T I A L

ICQ, INC. :

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INSTALLSHIELD SOFTWARE CORP., :

and :

SCANSOFT, INC. :

Defendants. :

X

Reston, Virginia

Tuesday, September 20, 2005

Deposition of DANIEL GLAZMAN, a witness  
herein, called for examination by counsel for the  
Defendants RED BEND SOFTWARE, INC., RED BEND, LTD,  
TIME WARNER, INC., ICQ, INC. and INSTALLSHIELD  
SOFTWARE CORP., in the above-entitled matter,  
pursuant to notice Fed.R.Civ.P.30(b)(6), taken at  
the offices of Greenblum & Bernstein, P.L.C., 1950

REF: 78627

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1 application.

2 Q At the lawyers' office?

3 A At the lawyers' office, those have to do

4 with the patent application.

5 Q Does BIS have an office in Jerusalem as  
6 well?

7 A No.

8 Q That office is closed?

9 A It is closed.

10 Q I take it there are no files in the office  
11 in Jerusalem?

12 A No. Someone else is using the space.

13 Q Is there a U.S. office of BIS?

14 A No.

15 Q Does BIS have any office other than the  
16 Tel Aviv office?

17 A No.

18 Q Do you know whether anyone gathered the  
19 documents that were at the accountants' office in  
20 response to the document requests?

21 A What was the question?

22 Q Did anyone -- let me back up.

23 I think you said that there were hard copy  
24 documents at the accountants' office; is that correct?

25 A Right.

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1 Q Did anyone gather documents from the  
2 accountants' office in response to the document  
3 request?

4 A Yes. The accountant was requested to  
5 gather documents to take.

6 Q Who asked the accountant to gather  
7 documents?

8 A Moti Miron.

9 Q Do you know what the accountant was asked  
10 to gather?

11 A All the documents that were referred in  
12 the request for disclosure.

13 Q Do you know what type of documents the  
14 accountant provided in response to the request?

15 A All types of financial documents.

16 Q When you say all types of financial  
17 documents, what do you mean?

18 A Annual reports, you have tax reports,  
19 savings, all this type of stuff.

20 Q Were the patent lawyers asked to provide  
21 their files?

22 A Yes.

23 Q Who asked the patent lawyers to provide  
24 the files?

25 A Also Moti.

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1 BY MS. FERNANDS:

2 Q Is there a hard copy file for each BIS  
3 customer?

4 A Yes.

5 Q Were those files gathered in response to  
6 the document request?

7 A As far as research.

8 Q Do you know if documents from files were  
9 produced?

10 A Everything searched and found was sent to  
11 our attorneys.

12 Q When you say everything was sent to the  
13 attorneys, everything that was in the files?

14 A Everything that was found was sent.  
15 Everything responsive to these questions that was  
16 found was sent.

17 Q Did you search the hard copy customer  
18 files?

19 A Me or a representative?

20 Q Did you personally, let's ask that one  
21 first?

22 A I personally didn't search the client  
23 files.

24 Q Was that Mr. Miron or Mr. Leave?

25 A They searched. Maybe it was a helper or

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1 secretaries.

2 Q Do you know who determined what was  
3 responsive so that -- who decided what to send to the

4 attorneys?

5 A Miron, they do the search.

6 Q So Mr. Miron or Mr. Leave decided which  
7 documents to send to the attorneys in response to the  
8 requests; is that correct?

9 A What I said is what was sent was what was  
10 found.

11 Q I'm just trying to make sure I understand  
12 they sent what they found. Did they send all of the  
13 documents or did they make a decision about what  
14 documents to send?

15 A Every document that is responsive to one  
16 of the questions was sent.

17 Q So they made a determination about what  
18 was responsive and sent those documents that they felt  
19 was responsive; is that correct?

20 A You are asking me their state of mind,  
21 what is their state of mind.

22 Q Well, I'm just trying to understand if  
23 Mr. Miron and Mr. Leave went to these hard copy files  
24 on the shelves and saw a customer file did they pick  
25 up the file and say copy it and send it to the

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1 their computer network?

2 A The computer contents has a file server  
3 and this file server is backed up to a magnetic media

4 or optical media.

5 Q How often is the backup done?

6 A Twice a week, once a week.

7 Q Once or twice a week?

8 A Yes.

9 Q The backups, you said, magnetic media or  
10 optical media?

11 A It switched. We switched to optical  
12 media.

13 Q How recently?

14 A A few months.

15 Q When you were using magnetic media, did  
16 you reuse the tapes periodically?

17 A Tapes are reused.

18 Q How often are the tapes reused?

19 A Backups may be kept for three to six  
20 months.

21 Q And then after three to six months they  
22 would be recycled and used to back up again; is that  
23 correct?

24 A Yes.

25 Q Are historic versions of the software kept

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1 on the network?

2 A No.

3 Q No? Are there multiple versions of

4 Transfast?

5 A Were there multiple versions?

6 Q Have there been more than one version of

7 Transfast?

8 MR. FINK: I'm going to object. I  
9 think that is beyond the scope of this deposition.

10 MS. FERNANDS: To the extent I'm trying  
11 to find out if those versions are stored, I'm trying  
12 to find out if there --

13 MR. FINK: You asked if historic  
14 versions were kept and he said no. So --

15 BY MS. FERNANDS:

16 Q Is only the most recent version of any BIS  
17 software product kept on the network?

18 A Once the version is kept, usually one  
19 version is kept.

20 Q The most recent version is kept?

21 A (Nodding head).

22 Q Are historic versions kept anywhere?

23 A To keep other versions, we don't keep  
24 other versions of the software, it's just to keep them  
25 as historical versions.

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1 Q You --

2 A I don't keep versions, historic versions.

3 Q You don't keep historical versions at all?

4 A No.

5 Q If a modification is made to the software,  
6 then the old version is lost?

7 MR. FINK: Again, I think this is  
8 beyond the scope of the deposition.

9 MS. FERNANDS: I would think it is well  
10 within the scope to determine whether there are old  
11 versions of the software in existence anywhere.

12 MR. FINK: You can ask him that.

13 BY MS. FERNANDS:

14 Q Are there any old versions of any BIS  
15 software in existence?

16 A No.

17 Q No?

18 A No.

19 Q Is the software, the current version of  
20 the software, kept on the network or somewhere else?

21 MR. FINK: Object to the form.

22 THE WITNESS: The current version --  
23 the version, work is kept in the file server.

24 BY MS. FERNANDS:

25 Q It's kept on the file server?

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1 code?

2 A Source codes and executable.

3 Q So when executable is delivered to a

4 customer, do you keep a version of what is sent to the  
5 customer?

6 A The distribution, we are in touch with the  
7 customers and created from them and this is kept  
8 almost up to date with the current version. It could  
9 be one or two months older because the current version  
10 is not fully tested, but otherwise, I don't have older  
11 versions.

12 Q I just want to make sure I understand.  
13 You keep up with the customer frequently and so the  
14 customer would have either the newest or close to the  
15 newest version; is that correct?

16 A Almost it is always the newest.

17 Q Do the customer files contain a disk of  
18 the software that has been sent to the customer?

19 MR. FINK: Objection. I think that's  
20 beyond the scope of the deposition as well.

21 MS. FERNANDS: I'm trying to find out  
22 what is in the files that were searched and I think  
23 it's within the scope.

24 MR. FINK: You're asking what is sent  
25 to the customers. You can ask whatever was at BIS.

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1           A     To see if it contained such data, it was  
2 searched and was sent.

3           Q     Were each of the -- is it ten employees;  
4 is that the right number?

5           A     What is?

6           Q     There are ten employees at BIS; is that  
7 correct?

8           A     (Nodding head).

9           Q     Do the employees also store information on  
10 their hard drives of their computers or is everything  
11 on the network?

12          A     Everything that we do is backed up on the  
13 network.

14          Q     Everything is on the network?

15          A     Everything we do excluding some things --  
16 the work -- basically everything that they do, it's a  
17 software, is backed up onto the server.

18          Q     Were all of the electronic -- did you or  
19 Mr. Miron or Mr. Leave ask all of the employees to  
20 search their files in response to the document  
21 request?

22          A     I asked employees to do a computer search.

23          Q     Do you know whether Mr. Miron or Mr. Leave  
24 searched all electronic files, even those created by  
25 other employees?

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1           A     The search was done by the server and no  
2 matter who it was created by.

3           Q     Do you know what criteria was used for the  
4 search on the server?

5           A     They searched the folders and files to see  
6 if it could have data, responsive data for these  
7 questions, and afterwards an additional keyword search  
8 was done using a bunch of keywords to find files that  
9 may be responsive to these questions that somehow were  
10 not found when looking into the folders manually.

11          Q     So I just want to understand. They went  
12 through the folders and made a judgment based on the  
13 folders first; is that correct?

14          A     They looked through every folder to see  
15 what may contain data and afterwards a second search  
16 was done using a search engine using keywords.

17          Q     Do you know what the keywords were for the  
18 search?

19          A     The keywords, we didn't stick to them,  
20 were the QBU, QDL, the transfer, delta, signature, and  
21 those were some of the keywords that were used.

22          Q     Do you know whether the names of the  
23 defendants were searched in the keyword search? For  
24 instance, Red Bend, InstallShield, ICQ?

25          A     Those were the keywords that were

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1 searched.

2 Q Are any of the files on the server  
3 restricted in access, like password protected?

4 A No.

5 Q So the search would cover everything that  
6 was on the server?

7 A Yes.

8 Q I think you said the backup disks, when  
9 you were using magnetic media, were recycled every  
10 three to six months; is that correct?

11 A Yes.

12 Q So is it correct there are no backup disks  
13 in existence from the 1998/1999 time period?

14 A No.

15 Q Did someone look through the backup disks  
16 to see if there were any old backup disks that still  
17 existed?

18 A Those magnetic media which was backed up  
19 was recycled.

20 Q Are any -- well, does BIS still have any  
21 of the magnetic media disks at BIS?

22 A To the best of my knowledge, no.

23 Q When did you switch to the optical media?

24 A A few months ago.

25 Q So up until a few months ago were there

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1 magnetic media disks at BIS?

2 A Magnetic media tape cartridges.

3 Q What happened to those cartridges?

4 A I think they weren't kept because -- we  
5 kept them a long time -- it was the back and forth was  
6 designed to be kept. We kept for a long time, so it  
7 was a few months and as a result, they weren't kept.

8 Q Did anyone look at the backup disks in  
9 connection with responding to the discovery requests?

10 A The backup disks, they were not searched.

11 Q Who is responsible for maintaining the BIS  
12 web site?

13 MR. FINK: Objection. I think that's  
14 beyond the scope of the deposition. Where would  
15 that come under?

16 BY MS. FERNANDS:

17 Q Does anyone -- does somebody maintain the  
18 BIS web site?

19 MR. FINK: Objection. Where does  
20 that --

21 MS. FERNANDS: Well, it comes under the  
22 web site that contains information that is  
23 responsive and I would like to know if there are any  
24 historic versions of it, so if someone maintains it,  
25 that will let me know the answer to that question

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1           A     If there was such in the files, they were  
2 found, it was sent.

3           Q     So, for instance, any prior contents to  
4 the web site has not been kept electronically anywhere  
5 at BIS?

6           A     No.

7           Q     What does BIS use for an E-mail system?

8           A     We have a server. And UNIX.

9           Q     UNIX server?

10          A     Yes.

11          Q     Is it the case that E-mails are retained  
12 electronically at BIS on a server, did you say?

13          A     Yes.

14          Q     The E-mails are kept electronically?

15          A     Yes.

16          Q     They are not printed out and stored?

17          A     It depends. It's either that or  
18 computers.

19          Q     If an E-mail in gathering documents in  
20 response to the request, were attachments to E-mails  
21 gathered?

22          A     Yes.

23          Q     Is it the case in the UNIX server that if  
24 an E-mail has an attachment that the attachment also  
25 still exists?

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1 10:56 a.m. and then the proceedings continued as  
2 follows at 11:05 a.m.)

3 (Whereupon, Paralegal Leiba Leichtner  
4 entered the room.)

5 BY MS. FERNANDS:

6 Q I just want to go back a little bit to who  
7 had which responsibilities in the document gathering.  
8 If I have it, there were three of you who  
9 participated: You, Mr. Miron and Mr. Leave; is that  
10 correct?

11 A And probably Mr. Miron and the other  
12 secretary.

13 Q And you were responsible for the technical  
14 documents; is that correct?

15 A Yes.

16 Q What did you do to search for technical  
17 documents?

18 A I was on the server and any part of the  
19 software and part of the source, the executable, any  
20 documents that were related to this, if there is some  
21 description, some memo inside the software,  
22 everything. Anything to do with the...

23 Q When you say the software, what are you  
24 referring to?

25 A The QDL, QBU and TransFast.

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1 Q Why did you search in QDL, QBU and  
2 TransFast?

3 MR. FINK: I'm going to object. I

4 think that's going beyond the scope of the notice.  
5 You can ask where they searched. Why they searched?

6 BY MS. FERNANDS:

7 Q Let me go back and we'll get back around  
8 to that.

9 Did you provide executable code for QDL,  
10 QBU and TransFast to the attorneys?

11 A What was called the search project, it  
12 includes the executable source and all the support  
13 that you need for software development.

14 Q Did somebody tell you to search the QDL,  
15 QBU and TransFast in connection with the document  
16 requests?

17 MR. FINK: I'm going to object to the  
18 extent that he was instructed to do so by counsel.  
19 Other than counsel told you to look at them, you can  
20 answer.

21 THE WITNESS: The QDL and QBU and  
22 TransFast, this was products that were covered by  
23 the patent or in some way related or referring to  
24 the patent description.

25 BY MS. FERNANDS:

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1 Q So if I understand, BIS has other products  
2 interest and -- I've forgotten the other name, you did  
3 not search any other software; is that correct?

4 A No.

5 Q And is that because they do not practice  
6 the 239 patent invention?

7 A It did not concern it in any way and  
8 having nothing to do with this.

9 MR. FINK: I'll object to that question  
10 to the extent that it requires a legal conclusion.

11 BY MS. FERNANDS:

12 Q Other than searching the technical files,  
13 did you personally search any of the files in  
14 connection with the document requests?

15 A I personally sent for the gathering of all  
16 of this and did not make any other searches.

17 Q You did not make any other searches?

18 A No.

19 Q Do you know which files Mr. Miron  
20 searched?

21 A He searched on his computers and on the  
22 file server.

23 Q Does Mr. Miron keep files on his personal  
24 computer that are not on the network?

25 A The main computer, the mail is kept on his

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1 personal computer, was searched.

2 Q You said the mail is kept on his personal  
3 computer. Is Outlook not networked?

4 A The Outlook we are using is not networked.  
5 The mail is kept on the individual computer.

6 Q So each employee's Outlook would have to  
7 be searched on their individual computer to search it;  
8 is that correct?

9 MR. FINK: Objection to the form.

10 BY MS. FERNANDS:

11 Q Is it possible to search the Outlook  
12 E-mail files for every one within BIS from the  
13 network?

14 A For the network itself, if Outlook is  
15 keeping files on the individual computers, you must  
16 search on his file on his computer.

17 Q And is that the case that Outlook BIS  
18 keeps files on only individual computers?

19 A Yes.

20 Q Was each employees individual computer  
21 searched to determine if they had E-mail in Outlook  
22 that was responsive to the requests?

23 A I didn't ask them if other computers were  
24 searched. I didn't ask.

25 Q When you say you didn't ask them, that's

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1 Mr. Miron and Mr. Leave?

2 A I did not ask Mr. Miron and Mr. Leave if  
3 they did search all the computers.

4 Q Do you know whether the other computers  
5 were searched?

6 A I didn't ask them if they did an  
7 individual search, so I don't know if they were  
8 searched.

9 Q Are there other types of files, computer  
10 files, that are only accessible on individuals  
11 computers at BIS?

12 A Not all the files like software was  
13 working. All of this is backed up on the file server.

14 Q You said all --

15 A The software project and stuff,  
16 everything, is backed up on the file server.

17 Q All of the software project files are  
18 backed up?

19 A All of the projects, except for the  
20 working copy for this week or these two weeks,  
21 everything is backed up on the server.

22 Q Is the working copy stored on an  
23 individual computer or is it also on the network?

24 A A working copy is kept on the working  
25 computer, but it is mainly after a week, two weeks,

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1 maximum, it's backed up on to the file server.

2 Q For instance, are Power Point  
3 presentations kept on individual computers or are they  
4 backed up?

5 A They are on the file server. I mean, a  
6 pure software project, you take the software project  
7 and they're working on it, if it's a working copy on  
8 the individual computers, then it is copied back to  
9 the server.

10 Q So I just want to make sure I understand.  
11 There are working copies of certain documents on  
12 individual computers but --

13 A I mean the software project. It's not  
14 practical to be working on a software project to make  
15 tests when he this is using the file server. It's not  
16 a practical thing to do.

17 Q But when you say the software project,  
18 what types of files do you have in mind?

19 A To work with the source files, to make the  
20 computer, you can test them, but it's not practical to  
21 do it on a file server.

22 Q So when you talk about the software  
23 project files, you're talking about the executable  
24 code, the source code?

25 A You put everything in code and put

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1 everything together to make it a piece of working  
2 software. On a software project there is a source  
3 code, there is the executable and control files that  
4 are needed to make it work together.

5 Q Are there also documents, Word documents,  
6 for instance, that describe the software?

7 A A few of them and part of them are with  
8 the source code and some are kept on the server.

9 Q Word documents describing the software are  
10 stored with the source files?

11 A Not everything, but software, if it does  
12 exist, it is with the source files, and so it also  
13 goes to the same process that it was sent.

14 Q So those would all be within the network  
15 server?

16 A Say?

17 Q Any files of that nature, a Word file  
18 describing the software, would be in the network  
19 server?

20 A If some piece of the software needs some  
21 more explanation, if it's a text file or document  
22 files or similar text files along with the software,  
23 as long as it's software.

24 Q So you're referring to explanation within  
25 the code so that programmers can understand?

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1           A     Sometimes there are additional files in  
2 addition to the source files, but it is together with  
3 the source files in the same folder.

4           Q     What about descriptions that are, for  
5 instance, a presentation to a customer describing the  
6 software; how are those kept?

7           A     This is complicated -- it is completely  
8 separated on the software projects. The presentations  
9 are kept on the file server, Power Point files,  
10 whatever it would be and a file server or sometimes in  
11 the computer are kept and then all of this is  
12 searched, the computer for the software itself.

13          Q     So you have the software projects on the  
14 server and then separate from the software project  
15 files but also on the server there are presentations;  
16 is that correct?

17          A     Exactly. And there are presentations on  
18 numerical computers and it was also searched, the  
19 other computers with the software was also searched.

20          Q     So Mr. Miron's computer was also searched  
21 and he could have presentations?

22          A     Any presentations that were on his  
23 computer were found and sent.

24          Q     Is there anyone else in the company who  
25 might have presentations on their personal computer?

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1 A His name --

2 MR. FINK: Wait, wait, wait. I think  
3 that's going beyond the scope of this deposition as

4 well.

5 BY MS. FERNANDS:

6 Q Do you know was the marketing persons  
7 personal computer searched?

8 A As I said before, I didn't ask Moti and  
9 Mr. Leave if this computer, was it searched. As I  
10 said before, I didn't ask Mr. Miron or Mr. Leave if  
11 they asked other employees to search their computers.

12 Q You don't know whether the marketing  
13 person's computer was searched?

14 A I didn't ask them if it was searched or  
15 instructed the employees to search it.

16 Q You're aware of the patent that we've been  
17 calling the 239 patent; is that correct?

18 A Excuse me?

19 Q You know that this case involves something  
20 called the 239 patent, right?

21 A Right.

22 Q Do you know if files concerning the 239  
23 patent were looked for in response to the document  
24 request?

25 A We looked for hard copy files and they

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1 BY MS. FERNANDS:

2 Q Do you know when Mr. Miron searched his  
3 home computer in response to --

4 A I didn't ask him if he has files in his  
5 computer so, of course, I didn't ask him if he  
6 searched his computer.

7 Q Do you know whether there is any version  
8 source code or executable code still in existence from  
9 1998 for TransFast?

10 MR. FINK: Objection. Asked and  
11 answered.

12 THE WITNESS: In keeping current  
13 versions of the software some pieces of -- some  
14 parts of the software that were obsolete for a long  
15 time for a current version might be quite old, so by  
16 keeping the current version of the software so --  
17 and the current versions were submitted.

18 BY MS. FERNANDS:

19 Q Is it possible to tell from the source  
20 code how old various portions of the code are?

21 MR. FINK: Objection. I think that  
22 goes beyond the scope of the deposition notice.

23 MS. FERNANDS: Are you going to  
24 instruct him not to answer?

25 MR. FINK: Tell me what your number is

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1 and I'll tell you whether or not he's going to  
2 testify on that.

3 MS. FERNANDS: I think it certainly

4 goes to the retention of materials generally whether  
5 current version -- you can tell from current  
6 versions what their origin is.

7 MR. FINK: It's about retention  
8 policies. It has nothing to do with determining  
9 whether a specific document is a specific version.  
10 I think that's beyond the scope of the deposition  
11 and he's not designated to testify.

12 MS. FERNANDS: Can he answer the  
13 question?

14 MR. FINK: No.

15 MS. FERNANDS: Are you instructing him  
16 not to answer?

17 MR. FINK: Uh-huh. You've already  
18 asked whether they maintain such files. He's told  
19 you no.

20 BY MS. FERNANDS:

21 Q Do you know whether Mr. Miron has  
22 personally retained any older versions of the  
23 software?

24 A I asked this but the software is not  
25 Mr. Miron's responsibility, so versions of the

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1 software are not kept on his computer.

2 Q Was there a search for all documents  
3 concerning the design and development of the TransFast

4 software?

5 A The keyword search was done and this  
6 keyword search included the TransFast keyword which  
7 was one of the searched keywords so if there was any  
8 documents corresponding to this, they were found and  
9 submitted.

10 Q Did you do that search for TransFast or  
11 was that Mr. Miron or Mr. Leave?

12 A That was Mr. Leave.

13 Q Do you know what types of documents exist  
14 concerning TransFast?

15 A It could be documents, it could have been  
16 some presentation documents. But everything that was  
17 found containing TransFast in keyword was submitted.

18 Q And Mr. Miron and Mr. Leave told you that  
19 everything that they found for the keywords was sent  
20 to the lawyers?

21 A Yes.

22 Q Is that the same for QBU?

23 A The same for QBU and QDL.

24 Q Did Mr. Miron tell you that they had  
25 searched for all documents concerning his original

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1 software that embodies the patented information.  
2 Why don't you just ask about specific products?  
3 It's an improper question. He can't answer it.

4 BY MS. FERNANDS:

5 Q Do you know whether there were any  
6 prototype or beta software projects related to the  
7 invention described in the 239 patent?

8 A The project is something using QDL and QBU  
9 is a project that is using this patent.

10 Q Prior to QDL and QBU, were there any  
11 earlier versions or perhaps not even named, those that  
12 practiced the invention that is described in the 239  
13 patent?

14 MR. FINK: Objection. It goes way  
15 beyond the scope of this deposition. He's not  
16 designated to testify to that.

17 BY MS. FERNANDS:

18 Q Do you know whether there is -- actually,  
19 I think it's well within the scope, but do you know  
20 whether there are any early beta or prototype versions  
21 of QDL or QBU in existence?

22 A I don't understand exactly your question.

23 Q Do you know if -- QDL and QBU are  
24 commercial products, correct?

25 A Right.

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1 the hard copy files in our office or patent lawyer  
2 office, all these documents were searched for for  
3 anything that can be a responsive document for this.

4 Q And your understanding is Mr. Miron and  
5 Mr. Leave searched for any documents that were  
6 responsive to the request?

7 A Yes.

8 Q Do you know whether they limited what they  
9 provided to the lawyers based on their judgment that  
10 it wasn't responsive or that it was something that  
11 was based on their judgment that it wasn't responsive?

12 A To my best knowledge what they found, they  
13 submitted.

14 Q When you say what they found it was  
15 submitted, do you know if they made a cut of the  
16 documents based on their judgment this is responsive,  
17 this is not responsive?

18 A I know what to ask them, they submitted  
19 everything, no one did this thing, this was responsive  
20 to this, let's cut here, let's cut there.

21 Q Do you know whether the documents that  
22 were located included any documents about Red Bend or  
23 Red Bend Software?

24 A I didn't ask what was actually found, but  
25 what was searched, how it was searched, what was the

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1 answered.

2 THE WITNESS: If there is a search,  
3 keyword transfer, you find the document, the

4 document was sent.

5 BY MS. FERNANDS:

6 Q And the projects file for TransFast was  
7 also sent to the attorneys?

8 A The software project that contains all the  
9 files that are needed for this project, it includes  
10 source files, executable, control files to put  
11 everything together, all this was submitted.

12 Q Do you know whether there was a search for  
13 documents concerning any claim or challenge to the  
14 validity of the 239 patent?

15 A Again, these documents --

16 MR. FINK: I'm going to object to the  
17 line of questioning. He's already testified that  
18 they searched each and every request that defendants  
19 propounded and whatever they located, they  
20 submitted. So are you going to take him through  
21 each and every request? This is a complete waste of  
22 time.

23 MS. FERNANDS: First, objection would  
24 be sufficient to a speaking objection that isn't  
25 necessary, but I would like to explore the document

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1 request that is, in fact, a subject of this  
2 deposition, is a search for a gathering of documents  
3 in response to these requests and to the extent that

4 some are different than others, I don't believe it's  
5 a waste of time, I think it's perfectly appropriate.

6 MR. FINK: I think there was a  
7 question.

8 THE WITNESS: These documents were  
9 searched of the file, all the documents that are  
10 related to the patent or have copy of documents kept  
11 here, documents were kept with the office at the  
12 patent application, all these files were searched  
13 and such documents were found and submitted.

14 BY MS. FERNANDS:

15 Q If such documents were found, they were  
16 submitted?

17 A Yes.

18 Q Was there any attempt to look for articles  
19 or conference papers concerning -- of any form  
20 concerning the 239 patent?

21 A What type of papers?

22 Q Articles or was the invention ever  
23 presented at a conference or at an industry event,  
24 anything of that nature, was there --

25 MR. FINK: I'm going to object to the

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1 applications related to the invention in the 239  
2 patent?

3 MR. FINK: I'm going to object. I

4 think that goes beyond the scope of this deposition.

5 MS. FERNANDS: Certainly the custodian  
6 of records is responsive to the document request.

7 MR. FINK: So you're asking if he is  
8 aware of any foreign patent associates; is that what  
9 you're asking?

10 MS. FERNANDS: I'm asking if he's aware  
11 of any other location of documents responsive to the  
12 document request --

13 THE WITNESS: No.

14 BY MS. FERNANDS:

15 Q -- such as foreign patent applications  
16 that are non-U.S. patent applications?

17 A Not that I know of.

18 Q Do you know whether anyone, whether  
19 Mr. Miron or Mr. Leave, asked -- looked into whether  
20 there are other locations of documents concerning  
21 non-U.S. applications for the inventions described in  
22 the 239 U.S. patent?

23 A As I told you before, I didn't ask him did  
24 he keep files at home or did he keep files on the home  
25 computer.

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1 computer, it is a product, you do something like  
2 Delta, it would come up in the search because Delta  
3 was one of the search keywords.

4 MR. FINK: Go off the record a second.

5 MS. FERNANDS: Let's go off the record  
6 a second.

7 (Discussion off the record.)

8 (Whereupon, a luncheon recess was taken  
9 at 12:17 p.m. and then the proceedings continued as  
10 follows at 1:09 p.m.):

11 MR. FINK: When we broke for lunch we  
12 discussed certain issues that we were going to  
13 contact Israel to see if we could obtain additional  
14 information, specifically we wanted to know if Moti  
15 Miron kept any files at home and also about his  
16 computer and you wanted to know if any of the other  
17 employee's computers were searched and also about  
18 foreign files and Danny's going to tell you what he  
19 learned.

20 MS. FERNANDS: Okay. Why don't we go  
21 piece by piece?

22 BY MS. FERNANDS:

23 Q You were able to contact someone at lunch  
24 then, I take it, to learn the answers to some of these  
25 questions?

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1 A Right.

2 Q What did you learn about whether Mr. Miron  
3 has any files at home?

4 A He doesn't keep any hard copy files at  
5 home.

6 Q And does he keep anything on his personal  
7 computer at home?

8 A He said he has a laptop so it's actually  
9 the same computer at the office as at home.

10 Q So he doesn't have any hard copies and the  
11 computer is the same so there are no additional files;  
12 is that right?

13 A Right.

14 Q And what about individual computers of  
15 other employees; were those searched?

16 A The computer, the one responsible for  
17 marketing, was searched. The person wasn't there but  
18 the computer was searched for everything including all  
19 the E-mail files, including the secretary has  
20 multicomputers that were searched and the server was  
21 searched and everything that was found was the same  
22 searching, the attempts to search, keywords were  
23 submitted.

24 The computers of the programers were not  
25 searched because we have no reason to believe data --

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1 unresponsive data would be found there.

2 Q Do the programmers ever have contact with  
3 the customers?

4 A Only about issues like error reporting  
5 going back and forth and this is usually not kept for  
6 a long time.

7 Q Do you know whether the programmers ever  
8 keep older versions of the software on their own  
9 computers?

10 A To my best knowledge, no. And also we  
11 don't keep older versions, so not as to get confused,  
12 so we keep the current working version.

13 Q But you don't know whether the programmers  
14 keep any older versions on their old computers?

15 A To my own knowledge they don't keep.

16 Q Were you able to learn anything about  
17 non-U.S. patent applications?

18 A The office who do the patent application  
19 was requested to send all of the files that were and  
20 also files were photocopied and sent to BIS.

21 Q I'm sorry. I don't think I caught that.  
22 What was that?

23 A The law office, Eitan Pearl, if there was  
24 a patent application was asked to provide a copy, all  
25 of the documents related to this and this was

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1 submitted as is. And this includes any documents in  
2 this category which were searched.

3 Q Did you determine whether there was anyone

4 other than the Eitan group involved in any non-U.S.  
5 applications who might have documents?

6 A Any documents, they should be with the  
7 Eitan law office, because BIS didn't contact the law  
8 office about those applications. So if any was  
9 involved, it was in the patent office and they should  
10 have all the documents.

11 Q Did Mr. Miron review the documents that --  
12 well, did the Eitan provide documents directly to  
13 attorneys or were they sent to BIS?

14 A It was sent to BIS and the entire file was  
15 sent to Mr. Leave.

16 Q Did Mr. Miron review it before sending it?

17 A No. It was sent as is.

18 Q So you don't know whether it included any  
19 non-U.S. applications that were in the file?

20 A Personally I don't know, but if there was  
21 anything like this, anything like this existed, these  
22 files were sent.

23 Q Do you know whether Mr. Miron knows  
24 whether there were non-U.S. applications within the  
25 file?

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1           A     I didn't ask specifically about this, but  
2 everything that was in the file was submitted, so it  
3 should include this and if any such documents were  
4 there, they were included.

5           Q     But you didn't review the file so you  
6 don't know what was in the file; is that correct?

7           A     I didn't review. The file was sent as is  
8 with the other files. I do not know what was in the  
9 files.

10          Q     With respect to the individual computers,  
11 were the Outlook folders searched on those computers  
12 when they were searched -- I guess you said only the  
13 marketing person's?

14          A     Yes.

15          Q     Only that marketing person's was. The  
16 marketing person's Outlook folder was searched?

17          A     It was searched as part of the entire  
18 computer.

19          Q     And if I'm correct that Outlook is not  
20 networked, so it's not saved to the file server with  
21 the file server; is that correct?

22          A     The computer is not networked, but it was  
23 searched independently for that.

24          Q     Is everything that is networked stored on  
25 the backup disks when a backup is made?

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1           A     There was no instruction to all employees,  
2     no.

3           Q     Was there an instruction to any employees  
4     not to destroy documents?

5           A     I'm not aware of such thing.

6           Q     Do you know whether any documents have  
7     been destroyed since September of 2004?

8           A     No.

9           Q     Do you know whether anyone at BIS,  
10    excluding attorneys -- I'm not interested in what  
11    attorneys were instructed to do or told BIS about. Do  
12    you know whether anyone at BIS did a search for  
13    competitive products or prior inventions before the  
14    239 patent?

15          A     Inside of BIS?

16          Q     Inside of BIS, yes.

17          A     I don't know. Nope.

18               MR. FINK: I don't know if you're going  
19    to pursue this questioning, but I think it's going  
20    beyond the scope of the deposition.

21               BY MS. FERNANDS:

22          Q     Are there any documents at BIS concerning  
23    any prior inventions or any competitors that existed  
24    prior to the invention that's described in the 239  
25    patent?

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1           A     I think it was long enough to change so  
2 the question is irrelevant.

3           Q     The current marketing person has only been  
4 there a couple of months; is that correct?

5           A     Two months maybe.

6           Q     How long was the prior marketing person  
7 there?

8                     MR. FINK: I'm going to object. I  
9 think you're going beyond the scope of the  
10 deposition again. You can answer if you know.

11                    THE WITNESS: I don't know. A  
12 year-and-a-half, two years.

13                    BY MS. FERNANDS:

14           Q     Was there a marketing person before that  
15 who had documents concerning sales and marketing?

16           A     I think so.

17           Q     Who was responsible for marketing before  
18 the marketing person who was there for about a year to  
19 a year-and-a-half?

20           A     No one.

21           Q     Mr. Miron took care of the marketing  
22 himself?

23           A     Yes.

24           Q     Do you know whether in searching his files  
25 Mr. Miron located documents concerning sales or offers

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1 is that the person who would have control over  
2 documents concerning marketing plans?

3 A Many of the documents are prepared by  
4 Moti.

5 Q So Mr. Miron continues to prepare  
6 marketing plans as well?

7 A Well, he continues and you asked me the  
8 scope of this, but the marketing person is more to  
9 local customers, search for them, contact them, okay,  
10 we have this and this, can I send you these documents,  
11 so now this is Moti producing the documents.

12 Q So Mr. Miron has the responsibility for  
13 actually writing the marketing documents; is that  
14 correct?

15 A If you're a marketing person two months  
16 into the job, it's impossible for you to provide  
17 documents.

18 Q Did the prior marketing person provide  
19 marketing documents?

20 A Most of them are prepared by Moti, but,  
21 again, he would -- the day-to-day work was contact the  
22 customers, follow-up and things like this.

23 MR. FINK: Can we get back to the scope  
24 of the deposition?

25 BY MS. FERNANDS:

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1 beyond the scope of the deposition.

2 BY MS. FERNANDS:

3 Q Do you know whether there was a search

4 conducted for any documents that would show any  
5 diagrams or specifications for the TransFast product?

6 A These documents in presentation or  
7 marketing is not different from any other market  
8 presentation document, so if it's a Power Point show  
9 that describes it, it would show up in the search.

10 Q Do you know whether any such documents did  
11 show up in the search?

12 A Again, I don't know about the specific  
13 context of the search.

14 Q Would that be Mr. Miron and Mr. Leave who  
15 would know if documents --

16 A They did -- they performed the search  
17 so...

18 Q When you spoke with Mr. Miron and  
19 Mr. Leave before your deposition, did you ask them  
20 what types of documents had been provided to the  
21 attorneys?

22 A I asked them, according to this one  
23 (indicating) what was searched and how it was  
24 searched. I didn't ask for specific type of  
25 documents.

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1 that I get.

2 Q In response to the E-mails about the  
3 problem -- let me back up.

4 Did the E-mails about the problem address  
5 the functionality of the products?

6 MS. FERNANDS: Objection. You're  
7 beyond the scope of the deposition again.

8 THE WITNESS: Such messages, I get this  
9 error message on the computer, a screen message or  
10 error message, I did the backup and for some reason  
11 I cannot locate it now or I cannot restore it, these  
12 are the questions. This is from the person who is  
13 using the product.

14 BY MS. FERNANDS:

15 Q Do the programs correspond by E-mail  
16 concerning the development of the products?

17 A We have some meetings, we discuss it and  
18 usually, no, no such E-mails.

19 Q Do they ever correspond by E-mail about  
20 development?

21 A Usually not. We sit in the same room, or  
22 just in rooms and meet, if you need something, you go  
23 in between.

24 Q Did the programmers create any documents,  
25 list -- task lists for development or other

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1 Q Earlier you testified about certain backup  
2 tapes; is that correct?

3 A Uh-huh.

4 Q Was the purpose of those backup tapes for  
5 archival purposes?

6 A No.

7 Q What was the purpose of the backup tapes?

8 A The purpose of these backups was to  
9 provide recovery in case the server is broken, damaged  
10 or anticipated recovery.

11 Q To the best of your knowledge, are there  
12 any files on the backup tapes which are not still on  
13 the file server?

14 A No.

15 MR. FINK: That's all I have.

16 MS. FERNANDS: I actually have one  
17 follow-up question on that.

18 FURTHER EXAMINATION BY COUNSEL FOR THE DEFENDANTS

19 BY MS. FERNANDS:

20 Q With respect to the continuous -- the  
21 updating of versions of software, the backup tapes  
22 have the version as it existed at the time of the  
23 backup tape and not the current version?

24 A The backup contains any files as it  
25 existed at the time of backup.